

WILLIAM E. BOWMAN

IBLA 81-502

Decided July 29, 1981

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring mining claims abandoned and void. I MC 38061 through I MC 38064.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: William E. Bowman, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

William E. Bowman has appealed the April 3, 1981, decision of the Idaho State Office, Bureau of Land Management (BLM) which declared the Short Branch No. 1 through Short Branch No. 4 mining claims to be abandoned and void for failure to file timely either evidence of assessment work or a notice of intention to hold the claims pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations 43 CFR 3833.2-1(a) and 43 CFR 3833(a). 1/

1/ The decision, addressed to O. T. Hansen, declared 69 mining claims abandoned and void. The four claims at issue here are owned by appellant along with Grant Herrick, Frank Clay, Larry Clay, and Dave Campbell. The record shows that only appellant and Hansen received a copy of the

The Short Branch claims were located September 4, 1974, and properly recorded with BLM October 20, 1979. The record does not show any further filings made with BLM with respect to these claims.

Appellant's statement of reasons includes his affidavit, in which he states that he retained the firm of Hansen & Associates to perform assessment work on the claims and make the required filings. He also submitted a copy of a bill from Hansen & Associates dated February 15, 1981, for assessment work on the Short Branch claims. The bill does not state that evidence of assessment work or a notice of intention to hold the claims was filed with BLM. However, appellant states that when he paid the bill, he was led to believe that the appropriate filings were made in a timely manner.

[1] Section 314 of FLPMA, 43 U.S.C. § 1744(a) (1976), and its implementing regulation, 43 CFR 3833.2-1, requires evidence of assessment work for each preceding assessment year to be filed yearly with the proper BLM office within a specified time period. Appellant's affidavit of assessment work for the 1980 assessment year was due to be filed with BLM on or before December 30, 1980. Pursuant to 43 CFR 3833.4(a) the failure to satisfy the filing requirements of 43 CFR 3833.2-1 results in a conclusive presumption of abandonment and the claim is void. See 43 U.S.C. § 1744(c) (1976).

When appellant failed to file timely either evidence of assessment work or a notice of intention to hold the claims, BLM properly held the claim to have been abandoned and void. Robert C. Cluzen, 55 IBLA 12 (1981).

The firm appellant retained failed to submit the required instrument to BLM. The owners of a claim, however, have the responsibility to insure the timely filing of the required instruments with BLM. Appellant, having delegated the responsibility to Hansen & Associates, must, unfortunately, suffer the consequences of their failure to perform. The Board has no authority to excuse lack of compliance. Sidney Hodges, 55 IBLA 17 (1981); Lynn Keith, 53 IBLA 192 (1981).

fn. 1 (continued)

BLM decision. Appellant stated that he hired Hansen & Associates to perform the assessment work on the claims and to file timely the proper instruments with BLM. There is no response from Hansen in the record, and appellant states that he has not discussed the matter with them. Since only a timely filing pursuant to 43 CFR 3833.2-1 would operate to reverse the BLM decision, and since appellant herein addresses the ultimate issue common to all five of the owners, we think it appropriate to consider the appeal even though the record fails to indicate that the other owners received a copy of the decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

